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### DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 100804324-1265-02]

RIN 0648-BB47

Magnuson-Stevens Act Provisions; Fisheries off West Coast States;

Pacific Coast Groundfish Fishery; Biennial Specifications and

Management Measures; Inseason Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

SUMMARY: This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

DATES: Effective 0001 hours (local time) November 1, 2011. Comments on this final rule must be received no later than [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by FDMS docket number NOAA-NMFS-2010-0194 by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal http://www.regulations.gov.
  - Fax: 206-526-6736, Attn: Gretchen Hanshew
- Mail: William W. Stelle, Jr., Regional Administrator,
   Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Gretchen Hanshew.

Instructions: All comments received are a part of the public record and will generally be posted to <a href="http://www.regulations.gov">http://www.regulations.gov</a> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew (Northwest Region, NMFS), 206-526-6147, fax: 206-526-6736, gretchen.hanshew@noaa.gov.

SUPPLEMENTARY INFORMATION:

### Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Website at

http://www.gpoaccess.gov/fr/index.html. Background information and documents are available at the Pacific Fishery Management Council's website at http://www.pcouncil.org/.

## Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. On November 3, 2010, NMFS published a proposed rule to implement the 2011-2012 harvest specifications and management measures for the Pacific Coast groundfish fishery (75 FR 67810). The final rule to implement the 2011-2012 harvest specifications and management measures for the Pacific Coast Groundfish Fishery was published on May 11, 2011 (76 FR 27508). This final rule was subsequently amended by inseason actions on June 30, 2011 (76 FR 38313). Additional changes to the 2011-2012 specifications and management measures were made in a final rule on May 19, 2011 (76 FR 28897), an interim final rule on June 15, 2011 (76 FR 34910), and in a correcting amendment on September 2, 2011 (76 FR 54713). These specifications and management measures are codified in the CFR (50 CFR part 660, subparts C through G).

Changes to current groundfish management measures implemented by this action were recommended by the Council at its September 12-19, 2011 meeting in San Mateo, California. The Council recommended adjustments to current groundfish management measures to respond to updated fishery information and other inseason management needs. The adjustments to fishery management measures are not expected to result in greater impacts to overfished species than originally projected

through the end of 2011. Estimated mortality of overfished and target species are the result of management measures designed to achieve, to the extent possible, but not exceed, ACLs of target species while fostering the rebuilding of overfished stocks by remaining within their rebuilding ACLs.

## Sablefish Daily Trip Limit Fishery South of 36° N. lat.

The Council recommended and NMFS is implementing a modest increase for the open access sablefish fishery trip limits south of  $36\,^{\circ}$  N. lat.

There is no formal allocation of sablefish between the limited entry fixed gear and open access sablefish daily trip limit (DTL) fisheries south of 36° N. lat. The Council designed 2011 trip limits for these two commercial groundfish non-trawl fisheries south of 36° N. lat. that were anticipated to allow slightly more overall harvest of sablefish by the limited entry fixed gear fishery. 2011 trip limits were also designed so that, when catches in each sector are combined, total impacts of these two fisheries are anticipated to approach but not exceed the 2011 non-trawl allocation for sablefish south of 36° N. lat.

Catch of sablefish in the limited entry fixed gear sablefish DTL fishery south of 36° N. lat. has been higher than anticipated. Based on the most recent fishery information, if no action is taken and catch remains higher than expected, landings of sablefish in this fishery through the end of the year would be 440 mt. This level of catch would exceed the sablefish harvest target of 373 mt for this fishery by approximately 12 percent. However, catch of sablefish in

the open access sablefish DTL fisheries south of 36° N. lat. has been lower than anticipated. Based on the most recent fishery information, if no action is taken and catch remains lower than expected, landings of sablefish through the end of the year would be 203 mt. This level of catch would be approximately 64 percent below the sablefish harvest target for this fishery of 319 mt.

The Council considered several combinations of trip limit changes in the limited entry fixed gear and open access sablefish DTL fisheries south of 36° N. lat. to maintain fishing opportunities through the remainder of 2011 where possible, while keeping catch within the 2011 sablefish ACL for the area south of 36° N. lat.

Since there is no formal allocation between the limited entry fixed gear and open access sablefish DTL fisheries south of 36° N.

lat. and since one fishery had a small projected overage and the other had a large projected underage, the Council recommended a modest increase in the open access sablefish DTL fishery trip limits for the end of 2011. With this increase in sablefish trip limits for Period 6 (November-December) for the open access sablefish DTL fishery, and retention of the current trip limits in the limited entry fixed gear sablefish DTL fishery, projected catches in these two fisheries combined is 652 mt, 60 mt below the 2011 non-trawl allocation for sablefish south of 36 N. lat. of 712 mt adjusted for discard mortality.

West Coast Groundfish Observer data indicate that impacts to overfished species in the commercial fixed gear sablefish fisheries south of 36° N. lat. are extremely low. Therefore, increases to trip

limits to raise projected impacts closer to the 2011 sablefish non-trawl allocation and the ACL are not anticipated to result in changes to impacts to co-occurring overfished groundfish species.

Therefore, the Council recommended and NMFS is implementing an increase for the open access fishery trip limits south of 36° N. lat. from "300 lb (136 kg) per day, or 1 landing per week of up to 1,200 lb (544 kg), not to exceed 2,400 lb (1089 kg) per 2 months" to "300 lb (136 kg) per day, or 1 landing per week of up to 1,500 lb (680 kg), not to exceed 3,000 lb (1361 kg) per 2 months" beginning in period 6, on November 1, through the end of the year.

### Shallow Nearshore Rockfish South of 40°10'N. lat.

The Council recommended and NMFS is implementing trip limit increases for shallow nearshore rockfish in the limited entry fixed gear and open access fishery south of 40°10′ N. lat.

At its September meeting, the Council considered how catches in the nearshore fishery as a whole south of 40°10′ N. lat. have been lower in 2011 than in previous years, and considered modest increases to allow additional harvest opportunities for shallow nearshore rockfish while keeping total catch within the applicable harvest quidelines.

Modest increases to the shallow nearshore rockfish trip limits in the limited entry fixed gear and open access fisheries in Period 6 (November 1 through December 31) are not projected to increase impacts to co-occurring overfished rockfish.

Therefore, the Council recommended and NMFS is implementing trip limit changes for shallow nearshore rockfish in the limited entry

fixed gear and open access fishery south of 40°10.00′ N. lat.: from "600 lb (272 kg) per 2 months" south of 40°10.00′ N. lat. in Period 6 (November-December) to "1,000 lb (454 kg) per 2 months" beginning in Period 6, on November 1, through the end of the year.

### Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is taken pursuant to the regulations implementing the Pacific Coast Groundfish FMP.

These actions are taken under the authority of 50 CFR 660.60(c) and are exempt from review under Executive Order 12866.

These inseason adjustments are taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, subparts C through G, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see ADDRESSES) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to biennial groundfish management measures under 5 U.S.C. 553(b)(B) because notice and comment would be impracticable and contrary to the public interest.

Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as quickly as possible.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its September 12-19, 2011, meeting in San Mateo, California. The Council recommended that these changes be implemented by November 1, 2011 or as quickly as possible thereafter. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the Agency from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington, Oregon, and California.

Changes to trip limits for sablefish in the open access sablefish DTL fishery south of 36° N. lat. and for shallow nearshore rockfish in the limited entry fixed gear and open access fisheries south of 40° 10′ N. lat. will allow fishermen additional harvest opportunities for sablefish and for species within the shallow nearshore rockfish complex. These changes are necessary to relieve a restriction by allowing additional harvest opportunities, while staying within ACLs. These changes must be implemented in a timely manner, as quickly as possible, so that fishermen are allowed increased opportunities to harvest available healthy stocks while preventing stocks from exceeding their ACLs. These changes are intended to meet the goal of

the Pacific Coast Groundfish FMP to achieve maximum biological yield while keeping within the constraints of overfished species rebuilding requirements. It would be contrary to the public interest to wait to implement these changes until after public notice and comment, because that would prevent fishermen from taking these fish at the time they are available, preventing additional harvest in fisheries that are important to coastal communities.

# List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian Fisheries.

Dated: October 25, 2011

Galen R. Tromble,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660--FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 <u>et seq.</u>, 16 U.S.C. 773 <u>et seq.</u>, and 16 U.S.C. 7001 <u>et seq</u>.

2. Table 2 (South) to part 660, subpart E, is revised to read as follows:

CLOSED

CLOSED

27 Cowcod

28 Bronzespotted rockfish

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC	Τ
? <b>N</b>	Minor nearshore rockfish & Black roc	kfish						1
3	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months	
	Deeper nearshore		<b></b>					1
5	40°10' - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months		000 11-10		
6	South of 34°27' N. lat.	500 lb/ 2 months	CLOSED	600 lb/ 2 months	900 lb/ 2 months			l
7	California scorpionfish	1,200 lb/ 2 months <sup>7/</sup>	CLOSED	1,200 lb/ 2 months	1,200 lb/ 2 months			
<sup>8</sup> Lingcod <sup>3/</sup>		CLOSED		800 lb/ 2 month		3	400 lb/ CLOSE month D	2
9 Pacific cod		1,000 lb/ 2 months						
O Spiny dogfish		200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		nths	1
1 0	Other fish <sup>4/</sup>	Unlimited						

- 1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

  2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.
- 3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of  $42^{\circ}$  N. lat.
- 4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."
- 5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at  $\S\S 660.71-660.74$ . This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.
- 6/ The trip limit that was in place for sablefish north of 36° N. Lat. in Jan-Feb 2011 was "1,750 lb per week, not to exceed 7,000 lb per 2 months". The trip limit that was in place for sablefish south of 36° N. Lat. in Jan-Feb 2011 was "400 lb per week, not to exceed 1,500 lb
- 7/ The trip limit that was in place for California scorpionfish south of 40°10' N. Lat. in Jan-Feb 2011 was "600 lb per 2 months".

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

3. Table 3 (South) to part 660, subpart F, is revised to read as follows:

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. Lat.

Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table MAR-APR JAN-FEB MAY-JUN JUL-AUG SEP-OCT NOV-DEC Rockfish Conservation Area  $(RCA)^{5/}$ : 30 fm line<sup>5/</sup> - 150 fm line<sup>5/</sup> 40°10' - 34°27' N. lat. 60 fm line<sup>5/</sup> - 150 fm line<sup>5/</sup> (also applies around islands) South of 34°27' N. lat. See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs). State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. Minor slope rockfish 1/8 Darkblotched rockfish Per trip, no more than 25% of weight of the sablefish landed 40°10' - 38° N. lat. South of 38° N. lat 10,000 lb/ 2 months 5 Splitnose 200 lb/ month 6 Sablefish 300 lb/ day, or 1 landing per week 300lb/ day, or 1 landing per of up to 800 lb, 300 lb/ day, or 1 landing per week of up to 1,050 lb, 8 40°10' - 36° N. lat. week of up to 950 lb, not to not to exceed not to exceed 2,100 lb/ 2 months exceed 1,900 lb/ 2 months 2,400 lb/ 2 months 400 lb/ day, or 1 ⋗ 300 lb/ day, or 1 landing per week landing per week of  $\Box$ 300 lb/ day, or 1 landing per week of up to 1,200 lb, not to of up to 1,500 lb, up to 1,500 lb, not to 9 South of 36° N. lat. not to exceed exceed 2.400 lb/ 2 months exceed 3.000 lb/ 2 6,000 lb/ 2 months months<sup>6/</sup> ယ 10 Thornyheads S CLOSED 11 40°10' - 34°27' N. lat. 50 lb/ day, no more than 1,000 lb/ 2 months 0 12 South of 34°27' N. lat. 13 Dover sole ⊆ 14 Arrowtooth flounder 3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 15 Petrale sole 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 7 English sole hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) 16 point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. 17 Starry flounder Other flatfish 2/ 18 Whiting 300 lb/ month Minor shelf rockfish 1/, Shortbelly, Widow & Chilipepper rockfish 21 40°10' - 34°27' N. lat. 300 lb/ 2 months 200 lb/2 months 300 lb/2 months CLOSED 750 lb/ 2 South of 34°27' N. lat. 750 lb/ 2 months 1,000 lb/ 2 months 22 months 23 Canary rockfish CLOSED 24 Yelloweye rockfish CLOSED

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC				
30	Minor nearshore rockfish & Black rockfish										
	rocktish			800 lb/ 2	900 lb/ 2	800 lb/ 2					
31	Shallow nearshore	600 lb/ 2 months	CLOSED	months	months	months	1,000 lb/ 2 months				
32	Deeper nearshore				1						
JZ	Deeper redistrore			700 lb/ 2	1						
33	40°10' - 34°27' N. lat.		CLOSED	months							
				600 lb/ 2	900 lb/ 2 months						
34	South of 34°27' N. lat.	500 lb/ 2 months		months							
35	California scorpionfish	1,200 lb/ 2	CLOSED		1,200 lb/ 2 months						
30	California scorpioniism	months		1,200 ID/ 2 IIIOHUIS							
36	Lingcod <sup>3/</sup>	CLOSED 400 lb/ month				CLOSED					
	Pacific cod			1 000	lh/ 2 months			7			
37	Tacine cou		1,000 lb/ 2 months								
38	Spiny dogfish	200,000 lb/	2 months	150,000 lb/ 2 months		onths	A				
39	4/							B			
	Other Fish <sup>4/</sup>	Unlimited									
	RIDGEBACK PRAWN AND, SOUTH OF							Ш			
41	NON-GROUNDFISH TRAWL Rockfis		Area (RCA) for	CA Halibut, Se	a Cucumber & I	Ridgeback Pra		3			
42	40° 10' - 38° N. lat.	100 fm line - 200		100 fm line $^{5/}$ - 150 fm line $^{5/}$							
		I'm line trial line so						(1)			
43	38° - 34° 27′ N. lat.	100 fm line <sup>5/</sup> - 150 fm line <sup>5/</sup>									
44	South of 34° 27′ N. lat.	100 fm line <sup>5/</sup> - 150 fm line <sup>5/</sup> along the mainland coast; shoreline - 150 fm line <sup>5/</sup> around islands									
45		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).									
46	PINK SHRIMP NON-GROUNDFISH TRA	SHRIMP NON-GROUNDFISH TRAWL GEAR (not subject to RCAs)  Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish									
47	South	2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.									

<sup>1/</sup> Yellowtail rockfish is included in the trip limits for minor shelf rockfish. POP is included in the trip limits for minor slope rockfish. Bronzespotted rockfish have a species specific trip limit.

<sup>2/ &</sup>quot;Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole. 3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

<sup>4/ &</sup>quot;Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (including longnose skates), ratfish, morids, grenadiers,

and kelp greenling.

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower

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